THE LAW SCHOOL.

LECTURE NOTES.

THE RIGHTS OF SUCCESSIVE ASSIGNEES OF CHOSES IN ACTION.—(*From Professor Ames' Lectures on Trusts.*)—*Dearle* v. *Hall.*[1]—One Brown was entitled to a yearly sum of ninety-three pounds, being his interest in a certain trust fund. He assigned this interest to the plaintiffs for value, but they gave no notice of the assignment to the trustees. Subsequently, Brown advertised his interest for sale, and the defendants, after inquiring of the trustees concerning Brown's title, and hearing of no encumbrances, purchased the interest. The court held that the plaintiffs could not enforce their claim to the property against the defendant, because they had given the trustees no notice of the assignment, and so had enabled Brown to commit this fraud. By later decisions,[2] a second assignee gains priority by the mere fact that he anticipates the first assignee in giving notice to the trustee, although he purchased without making any inquiries of the latter.

The court seem to have introduced a registry law, and without sufficient justification. If such a law is expedient, it should come from the Legislature, and the courts seem to recognize the anomalous character of the doctrine by applying it only to personal property.

Notice given to a trustee before he becomes a trustee counts for nothing.[3] But notice need not come directly from the assignee. Information obtained from a third person by a trustee, or, in the case of a chose in action, by the debtor, if of a character to influence a reasonable man, is sufficient.[4] If the assignor is himself one of the trustees, his knowledge of the assignment is not the knowledge of his co-trustee, and hence is not notice.[5] The principle of the rule requiring notice is to protect persons proposing to advance money, against prior undisclosed assignments. Now, if the assignor, who is also trustee, conceals the fact of the assignment, a subsequent assignee could not, by any reasonable inquiries, learn of it, and so the object of the rule would be defeated. On the same principle the knowledge of an *assignee* who is a trustee *is* the knowledge of his co-trustee.[6] If both assignees are volunteers,[7] or if notice is given simultaneously[8] by successive assignees for value, the first assignee prevails.

The English doctrine is not generally followed in this country. But the second assignee is entitled to priority under certain circumstances even in jurisdictions where the registry rule does not obtain. Thus, suppose that an obligee of a legal chose in action assigns it for value first to A, then to B. A gives no notice of the assignment to the obligor, and B collects the money. The right which each assignee obtains is a power. The one who first exercises the power, and reduces the chose

---

[1] 3 Russ. 48; Ames on Trusts, 423.
[2] Ames, Cas. on Trusts, p. 427, n. 1.
[3] *Buller* v. *Plunkett*, 1 Johns. & Hem. 441; *Somerset* v. *Cox*, 33 Beav. 634.
[4] *Lloyd* v. *Banks*, 3 Ch. 488, 490; *Ex parte Stewart*, 34 L. J. Bankr. 6.
[5] *Browne* v. *Savage*, 4 Drew. 635.
[6] *Willes* v. *Greenhill*, 29 Beav. 376; *Ex parte Garrard*, 5 Ch. D. 61.
[7] *Justice* v. *Wynne*, 12 Ir. Ch. 289.
[8] *Johnstone* v. *Cox*, 16 Ch. D. 571; *Ibid.*, 19 Ch. D. 17.

in action to possession, will have the legal right to the money. Here A and B are equally innocent, and hence their equities are equal; but B has obtained the legal title to the money, and is therefore entitled to keep it. The obligee is only liable to A in tort, for an assignor is a grantor, and in no sense a contractor, and he granted to A a power whose value he afterwards wrongfully destroyed.

If B, instead of collecting the money had obtained a judgment in his own name against the obligor, his right would be paramount to A's;[1] otherwise, if B got judgment in the assignor's name.

B might pursue still a third course, and enter into an agreement with the obligor by which the latter should agree to regard B, and not the original obligee, as his creditor. This agreement extinguishes the old debt. That is, there is a complete novation. The consideration for the obligor's promise to B is the equitable release; or, in other words, B agrees, in consideration of the debtor's promise to pay the debt to him, to relinquish all claims on the old debt. Since B has a power to sue for the debt, he has a right to make this promise; and therefore if A sues the obligor, thereafter, the latter has a perfect equitable defence; viz., the equitable release.[2]

FIXTURES. — PRIORITY BETWEEN CHATTEL AND REAL-ESTATE MORTGAGEES. — *From Professor Gray's Lectures.* — Where machinery, on which there is a mortgage already existing, is affixed to the realty and then mortgaged as real estate, a question arises as to the rights of the successive mortgagees. For example: A makes machinery and sells it to B, taking a mortgage for the price; B places the machines in his factory, and mortgages his estate for its full value to C. Who is to be protected? C's mortgage is subsequent to A's, it is true; but A, on the other hand, who knew when he sold the machinery that it was likely to become real estate, and so had some reason to anticipate the actual result, had a better opportunity to protect himself. Suppose, again, that C's mortgage existed before the machinery was placed in the factory, but he sets up a claim to the added value, on the general principle that a mortgagee has a right to all additional security. What are the rights of A and C under these circumstances?

In Massachusetts[3] it has been held that the real-estate mortgagee has a prior claim in both cases, whether the machinery was added to the land before or after the date of his mortgage. The New York courts[3] have taken just the opposite view. Neither of these positions is entirely satisfactory. The better rule would seem to be that laid down in Vermont.[3] So far as the real-estate mortgagee has made advances on the faith of property which he finds in the form of real estate, his claim is superior to that of the chattel mortgagee. But where the property has been improved since his mortgage, and he has in no way changed his position on the faith of the improvements, he cannot stand higher than the mortgagor, who holds the machinery subject to the chattel mortgage.

---

[1] *Judson* v. *Corcoran*, 17 How. 612; *Ins. Co.* v. *Corcoran*, 1 Gray, 75.

[2] *N. Y. & N. H. R. R. Co.* v. *Schuyler et al.*, 34 N. Y. 30, 80; *Strange* v. *H. & T. C. R. R. Co.*, 53 Tex. 162.

[3] See references in note on *Binkley* v. *Forkner*, 19 N. E. Rep. 753; 3 HARV. L. REV. 51. — [Ed.]